

even completely negating the credibility or viability of an integration proposal cannot be equated with disqualifying the putative malfeasor”).

37. In the Initial Decision, the ALJ disqualified SBB and dismissed its application, but also adopted a fallback position where he denied SBB any integration credit. The Review Board merely upheld that part of the Initial Decision which denied SBB any integration credit.⁷ Despite using pejorative language to describe SBB’s proposal, in *Religious Broadcasting* the Review Board only held that SBB’s proposal was unreliable; it did not conclude that SBB was unqualified, nor did it so indicate in the ordering clauses of the decision. Accordingly, Adams’ description of the *Religious Broadcasting* holding is a mischaracterization. Adams cites no cases or policy warranting a character inquiry or disqualification based on a denial of integration credit in an earlier proceeding.

D. Although the Commission’s Decision in *Mt. Baker Broadcasting* Was Adverse To Micheal Parker, The Commission Did Not Designate Any Character Issues Against Micheal Parker

38. On July 1, 1983, the Commission issued Mt. Baker Broadcasting Co., Inc. (“Mt. Baker”) a construction permit to build a new television station. Subsequently, Mt. Baker sought and the Commission granted three applications for extensions of time, extending until July 1, 1986, the date to complete construction.

⁷ Reading notes here that no appeal was taken regarding the Review Board’s decision to only affirm that part of the Initial Decision that denied integration credit. The proceeding was terminated through a settlement agreement on October 31, 1990. *Religious Broadcasting Network*, 5 FCC Rcd 6362 (1990). Since no appeal was taken within the permitted time, that part of the Review Board’s decision that denied SBB integration credit has become final.

Although Mt. Baker sought a fourth extension, in December 1986, the Mass Media Bureau denied its extension application. On December 31, 1986, Mt. Baker sought reconsideration, arguing that it was commencing program tests with its facility as of that date. In a supplement to its request, Mt. Baker stated that its tower and transmitting equipment had been installed during December 1986 and that equipment tests had begun on December 24. On January 12, 1987, on the basis of those representations, the Commission's staff reinstated Mt. Baker's construction permit on the condition that a license application be filed within ten days. The staff also set a new expiration date for the reinstated construction permit of January 30, 1987.

39. By April 28, 1987, Mt. Baker had not filed a license application. On that same date, the Commission's Field Operations Bureau inspected the station and discovered that the station had been constructed with facilities substantially different than authorized. Because Mt. Baker's construction permit had expired without filing a license application, on June 23, 1987, the staff cancelled the permit and ordered the station off the air. Mt. Baker filed a petition for reconsideration which was denied. It subsequently filed an application for review.

40. Mt. Baker argued that a forfeiture was the appropriate sanction for unauthorized construction, not cancellation of the construction permit. It also argued, but did not provide documentation, that it had expended more than \$600,000 in construction and operation of the station. In denying Mt. Baker's application for review, the Commission stated that "the facts clearly indicate an

effort to deceive the Commission.” *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 at ¶8.

41. Although the Commission stated that Mt. Baker’s actions were taken with an intent to deceive the Commission, it is significant that the only sanction against Mt. Baker was cancellation of its construction permit for unauthorized construction. The Commission could have imposed a forfeiture and it also could have opened a character proceeding against the principals of Mt. Baker and all applications in which they had an interest.⁸ Adams has not shown how Micheal Parker’s involvement in Mt. Baker could have any decisional significance in this proceeding.

E. Even Assuming Arguendo That The Transgressions By Micheal Parker In *Religious Broadcasting* And *Mt. Baker* Pose Concerns, The Cases Are Too Remote For Consideration With Reading’s Renewal Application.

42. The alleged transgressions in *Religious Broadcasting* and *Mt. Baker* are isolated occurrences and are too remote for consideration with Reading’s renewal application. The Commission’s *Character Policy Statement* limits its purview over conduct reflecting on “character” as follows: “As to the time period relevant to character inquiries, we find that, as a general matter, conduct which has occurred and was or should have been discovered by the Commission, due to information within its control, prior to the current license term should not be considered, and that, even as to consideration of past conduct indicating ‘a flagrant

⁸ See Section 403 of the Communications Act of 1934, as amended, and 47 C.F.R. § 1.80.

disregard of the Commission's regulations and policies,' a ten-year limitation should apply. *Character Policy Statement*, 102 FCC 2d 1179, 1229 at ¶105 (1986) *citing Central Texas Broadcasting Company, Ltd.*, 90 FCC 2d 583, 593 (Rev. Bd. 1982).

43. The allegations about Micheal Parker in these proceedings are well over ten years old: the conduct in Religious Broadcasting occurred in 1987; the conduct in Mt. Baker occurred in 1987-1988. The conduct thus falls well within the Commission's holding that even in instances where there has been "a flagrant disregard of the Commission's regulations and policies," a ten year limitation should apply.⁹

44. Here, the conduct alleged by Adams not only occurred and was known by the Commission prior to the current license term, it is also more than ten years old. Therefore, pursuant to the *Character Policy Statement*, this conduct is too remote for consideration in Reading's renewal proceeding.

III. Adams' Second Requested Issue Was Addressed In The *Two If By Sea* Broadcasting Decision And Subsequently In The Norwell, Massachusetts Assignment Application.

45. Adams also requests that the Presiding Officer add an issue to the instant proceeding regarding Micheal Parker's basic character qualifications based on alleged reporting violations. Adams alleges that in multiple applications filed by Micheal Parker since *Religious Broadcasting* and *Mt. Baker*, Micheal Parker has

⁹ Apart from the normal difficulties of recalling events from the distant past, all of the Commission's files from these proceedings have been destroyed or archived, presenting significant obstacles to any fact-finding process. See Exhibit F. Moreover, any inquiry into integration proposals made more than a decade ago would be particularly pointless now that the integration credit has been eliminated.

failed to advise the Commission of the nature and extent of the outcome of those decisions. Adams represents this as an issue that is related, yet independent from the alleged misconduct that was addressed in the *Two If By Sea Broadcasting* proceeding. *Motion* at p. (ii). This simply is not true.

46. In Shurberg's Opposition to TIBS request for emergency relief in the *Two If By Sea Broadcasting* proceeding, which was filed on December 27, 1996 by counsel that represents Adams here, Shurberg claimed, in part, that TIBS was not qualified to be a Commission licensee because Micheal Parker, in subsequent applications, failed to properly advise the Commission about the nature and extent of the *Religious Broadcasting* and *Mt. Baker* decisions. *Formal Opposition To, And Motion To Strike, Letter Request Seeking Emergency Relief* at ¶¶65-78. See Exhibit D.

47. Contrary to Adams' representation, its second requested issue is nothing more than a recharacterization of the first issue. Adams' second requested issue was subsumed into the first issue when the Commission, in *Two If By Sea Broadcasting*, decided that because Shurberg had presented the Commission with allegations of material fact regarding TIBS/Parker's qualifications, including the alleged reporting violations, it was precluded from acting on the Hartford assignment application without a hearing.

48. Therefore, we ask that the Presiding Officer to incorporate by reference Reading's arguments presented herein, *supra* at ¶¶ 14-27. The alleged reporting issue that Adams presents as its second issue was first addressed in the *Two If By*

Sea Broadcasting proceeding. When the Mass Media Bureau granted the Norwell, Massachusetts assignment application shortly after the release of the *Two If By Sea Broadcasting* decision, as discussed *supra* at ¶¶23-27, the Bureau concluded that the outstanding matters relating to Micheal Parker that were raised in the *Two If By Sea Broadcasting* proceeding, absent further showing, do not involve the day-to-day operations of other stations in which Micheal Parker holds an interest, and therefore, do not impede Commission action on other applications involving Micheal Parker. For the same reasons, it is unnecessary, in this case, to consider Reading's basic character qualifications to be a Commission licensee.

IV. Micheal Parker Met The Commission's Requirements For Reporting Information About Other Applications In Which He Had An Interest.

49. In comparative cases, reporting violations will be tried only after the movant makes a *prima facie* showing that: (1) the unreported information is of decisional significance, (2) an intent to conceal is present, or (3) a pattern of repeated violations or other circumstances reflect significant carelessness is present. *See GAF Broadcasting Company, Inc.*, 8 FCC Rcd 8210, 8211 at ¶4 (1993); *Goodlettsville Broadcasting Co.*, 8 FCC Rcd 5178, 5181 (1993); *Merrimack Valley Broadcasting*, 99 FCC 2d 680, 683 n.9 (1984). Adams attempts to circumvent this requirement by merely alleging that Micheal Parker has committed reporting violations and that these allegations, without more, provide a sufficient basis for the Presiding Officer to add a character issue to this proceeding. Adams has failed to make the necessary *prima facie* showing.

50. Adams first alleges that Micheal Parker, when submitting consent to assignment applications for the Reading, Twentynine Palms and Dallas broadcast stations, failed to provide full and candid information concerning its Religious Broadcasting and Mt. Baker applications. *Motion* at ¶ 13.

51. Adams also alleges that it “has also located in the Commission’s files yet another application (File No. BPTTL-891208ZI) filed by Mr. Parker in his own name (“Micheal L. Parker”) for a new low power television station in Los Angeles.” *Motion* at n.11. Adams provides, as Attachment G to its *Motion*, what is purported to be a copy of an actual exhibit from the original application. Although Adams makes the unsupported claim that the application is still pending, the Commission’s database shows that the application was dismissed in 1993. *See* Exhibit G. Moreover, the application is no longer available from the Commission’s files and Reading has been unable to obtain a copy of the application or any amendments that may have been filed thereafter. *See* Exhibit F. Therefore, unless Adams can produce a complete date-stamped copy of that application, as filed, and any subsequently filed amendments, Reading urges the Presiding Officer to disregard that part of Adams’ *Motion*.

52. After acknowledging that Micheal Parker did, in fact, disclose certain information about the Religious Broadcasting and Mt. Baker applications, *Motion* at ¶22, Adams then argues that even if Micheal Parker did make these disclosures, his character should be questioned because he failed to include the full official citation to the reported decisions in question. Adams stretches the imagination by using

confounded logic to argue that citation to FCC document numbers rather than official reporters should be deemed by the Commission to be an issue of misrepresentation and/or lack of candor.¹⁰ From this, Adams argues that the issues in Reading's renewal hearing should be enlarged to include a misrepresentation and/or lack of candor issue. Essentially, Adams claims that since Micheal Parker has an interest in Reading, the profound character flaw of citing FCC document numbers rather than official reporters should then be imputed to Reading, and potentially result in the dismissal of Reading's renewal application.¹¹ The only thing missing from this fanciful theory is a name for this form of psychosis, which undoubtedly has its roots in past heartbreaking experiences with the Blue Book.

53. As an initial matter, it appears that the Commission's rule regarding the appropriate citation of Commission documents, 47 C.F.R. § 1.14, applies to filings in proceedings before the Commission and not to written statements included with applications. *Cf.* 47 C.F.R. § 73.3514. Notwithstanding this distinction, it is absurd for Adams to suggest that Commission staff members would find it difficult to locate an official agency release by its release number. It is almost certain that

¹⁰ Lack of candor is characterized by failure to disclose material information. Misrepresentation is characterized by making a material false statement to the Commission. *See Roy M. Speer*, 11 FCC Rcd 18383, 18421 at ¶72 (1996). Material facts are those that the Commission considers relevant to making its public interest judgment. *Id.* at n.13. (internal citations omitted).

¹¹ If improper citation were a matter of character qualifications, even Commission personnel would operate under a cloud of suspicion because it is not uncommon for Commission decisions to cite FCC document numbers. *See, e.g., Alan N. Braverman*, 12 FCC Rcd 9919 n.2 (MMB 1997).

new Commission staff members are taught that all official agency releases are given a release number. The release number is found at the top right hand corner of the first page of all official FCC releases. If the matter was delegated to a bureau or division of a bureau within the Commission, the release number begins with a “DA” for “delegated authority”; otherwise, it begins with “FCC,” which indicates that the document was issued by the Commission itself. “DA” or “FCC” is followed by a space, an abbreviation for the year of release, a hyphen, and a number that designates the order in which the matter is released. Thus, “FCC 99-101” designates the 101st official FCC document released in 1999. There are also release numbers that include letters. For example, “FCC 88D-011” indicates that an administrative law judge issued the decision; “FCC 88M-523” indicates that this document is a *Memorandum Opinion and Order*; “FCC 88-R018” indicates that the Review Board issued the decision; and “FCC 88J-34” indicates that a federal-state joint board issued the decision. None of this is esoteric or mysterious to the staff of the agency. In any event, Reading is not aware of any case in the Commission’s history where the Commission imposed a sanction on an applicant that failed to include citations to the official FCC Record.

54. An applicant for a broadcast license is required to advise the Commission regarding whether it or any party to the application has had any interest in or connection with an application that was dismissed with prejudice, denied, or is the subject of unresolved character issues. Applicants also have a continuing obligation to advise the Commission of any substantial and significant

changes to information furnished in applications. See Sections 1.17, 1.65, and 73.1015 of the Commission's Rules.

55. A review of the applications in question shows that Micheal Parker, by referencing the underlying decisions, fully complied with the Commission's reporting requirements. In fact, on two occasions companies in which Micheal Parker was a principal disclosed the decision in *Two If By Sea Broadcasting*, a disclosure that arguably was not required.¹²

56. Adams also alleges that Micheal Parker misrepresented himself regarding whether any qualifying character issues were pending against any of the applicants listed in the Dallas international broadcast application when he filed an amendment to the application in October 1992. *Motion* at ¶20. This amendment, which does not appear in the Commission's publicly available files, stated, in relevant part, "This will confirm that no character issues had been added or requested against those applicants when those applications were dismissed."

¹² *Two If By Sea Broadcasting* was disclosed in connection with two other applications in which Micheal Parker was a principal. See *supra* ¶10 and Exhibit B and ¶ 25 and Exhibit E. The HDO that was issued regarding *Two If By Sea Broadcasting* did not specify any issues with respect to TIBS/Parker. Even if an HDO specifying issues against TIBS/Parker had been issued, any issue identified in the HDO merely represents an allegation and not a showing that TIBS/Parker engaged in an improper action. See *In re Metroplex Communications of Florida, Inc.*, 1984 FCC LEXIS, 2610, FCC 84-244 citing *Cleveland Television Corp. v. FCC*, 732 F.2d 962, n.13 (D.C. Cir. 1984). Because a licensee/permittee is only required to disclose adverse findings and not mere allegations, and no adverse finding has issued from *Two If By Sea Broadcasting* allegations, Micheal Parker was under no obligation to disclose the allegations put forth in *Two If By Sea Broadcasting*.

57. Adams, however, incorrectly states that “a character issue had been both requested and added – and resolved adversely to Mr. Parker’s application in the *Religious Broadcasting Network* case.” First, as explained *supra*, although the ALJ disqualified SBB in the Initial Decision, the Review Board did not affirm that portion of the ALJ’s decision. The Review Board only went so far as to deny SBB integration credit for comparative purposes. Therefore, a character issue had not been resolved adversely to SBB’s application in *Religious Broadcasting*.

58. Clearly, a real party-in-interest issue was added by the ALJ in the course of the *Religious Broadcasting* decision. However, Micheal Parker, in the Amendment, did not state that no character issues had ever been added or requested against the applications, he only stated that no character issues had been added or requested against those applications “*when those applications were dismissed.*” (*emphasis added*). This statement is correct. At the point at which the applications became final (*i.e.*, the point where a final decision had been reached regarding the application and the application is subsequently dismissed), no unresolved character issues were pending. Even though the ALJ had earlier added a character issue in *Religious Broadcasting*, at the point of final disposition, that issue had been dealt with and there were no unresolved character issues pending.¹³

¹³ The wording of the amendment appears to derive from the Commission’s decision in *Allegan County Broadcasters Inc.*, 83 FCC 2d 371 (1980), wherein the Commission reversed long-standing policy to allow parties with unresolved character issues to request dismissal of their applications as part of a settlement. In reversing that policy, the Commission required applicants to report unresolved character issues in subsequent applications. However, the *Religious Broadcasting* case involved a resolved rather than unresolved character issue.

Parker's application referenced the Review Board's decision, so the holding of that decision was not in any way concealed. Likewise, in *Mt. Baker*, even though the Commission did find that the applicant had made an effort to deceive the Commission, it did not designate a character issue or dismiss the application with an unresolved character issue. Therefore, Micheal Parker's statement in the Amendment is factually correct.

59. Even if Adams takes issue with such a literal reading of the amendment, the most that could be inferred is that Micheal Parker reached an erroneous legal conclusion with regard to reporting character issues that had been added or requested against the respective applications.¹⁴ Given the difficulty that even Adams' counsel seems to have in deciphering the legal conclusions reached in the decisions in question, it is difficult to conclude that Micheal Parker intentionally misled the Commission. The disclosure of the *Religious Broadcasting* and *Mt. Baker* decisions in the exhibit to the application, with accurate FCC document numbers, undercuts any inference of an intent by Micheal Parker to deceive the Commission regarding whether any character issues had ever been added or requested against these applications.¹⁵ Therefore, Adams has failed to

¹⁴ See Gary D. Terrell, 102 FCC 2d 787 (Rev. Bd. 1989) (carelessness and a mistake of law are entirely different from an intent to deceive); see also *American Indian Broadcast Group, Inc.*, 4 FCC Rcd 8034 (ALJ 1989) at ¶21 (same holding).

¹⁵ See, e.g., *California State University, Sacramento*, 13 FCC Rcd 17960 (1998) (disclosure of transmitter site loss in collateral application rebuts lack of candor claim where applicant failed to file a Section 1.65 amendment); *Viacom International, Inc.*, 12 FCC Rcd 8474 (MMB 1997) (failure to disclose pledge to

raise a substantial and material question that Micheal Parker intended to conceal that any character issues had been added or requested against applications in which he was a part. *See Roy M. Speer*, 11 FCC Rcd 18393, 18419-18427 (1996) (where applicant has made statement based on faulty legal conclusions and there is no evidence that the statement was motivated by an intent to deceive, the Commission finds no substantial question as to the applicant's propensity to deal honestly with the Commission). We note here that Reading, through its counsel, with regard to the instant renewal application, disclosed the decision of the Commission in *Two If By Sea Broadcasting*.¹⁶

60. Adams also alleges that “[t]o the extent that the amendment failed to mention anything about the Commission’s Mt. Baker decision – in which the Commission had found Mr. Parker’s company to have engaged in deception to the

market stations being spun off to minority broadcasters does not rise to lack of candor because the information was a matter of public record); *Seven Hills Television Co.*, 2 FCC Rcd 6867 at ¶74 (Rev. Bd. 1987) (*subsequent history omitted*) (failure to report material agreements is a serious violation of Section 1.65, but intent to deceive cannot be inferred where the Bureau was alerted to the existence of the agreements); *Telephone and Data Systems, Inc.*, 10 FCC Rcd 10518 at ¶16 and n.22 (ALJ 1995):

[W]here a party already has disclosed the information which it is later charged with attempting to conceal, the Commission has found an absence of intent to make misrepresentations or lack of candor. *See, e.g., Calvary Educational Broadcasting Network*, 9 FCC Rcd 6412, 6420 (Rev. Bd. 1994); *Valley Broadcasting Co.*, 4 FCC Rcd 2611, 2614-15 (Rev. Bd. 1989); *International Radio, Inc.*, 98 FCC 2d 608, 639 (Rev. Bd. 1984); *Superior Broadcasting of California*, 94 FCC 2d 904, 909 (Rev. Bd. 1983). [footnote omitted].

¹⁶ See text at ¶10 *supra* and Exhibit B.

Commission -- the amendment was also lacking in candor.” *Motion* at ¶ 20.

However, Micheal Parker had previously stated in Exhibit 3 to the application that Mt. Baker was denied an application for extension of time of its construction permit, and also indicated that the Commission’s decision in that case was a Memorandum Opinion and Order, together with the FCC document number and release date.

Additionally, even though the Commission did state that “the facts clearly indicate an effort to deceive the Commission,” *Mt. Baker* at ¶8, the Commission did not ever designate a character issue against Micheal Parker based on his role in *Mt. Baker*. Micheal Parker disclosed the information required by the Commission’s rules and policies, and the Dallas amendment was completely consistent with the *Mt. Baker* decision. As shown above, Micheal Parker’s disclosure of the relevant decisions, which were a matter of public record, precludes the inference that he intended to deceive the Commission.

61. Under the Commission’s Rules, applicants are prohibited from making any written “misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.” 47 C.F.R. § 73.1015. Although any violation of the Commission’s rules raises character concerns, all violations do not rise to the level of potentially disqualifying an applicant. *See Virginia RSA 6 Cellular Ltd. Partnership*, 6 FCC Rcd 405, 407 (1991), *citing Character Policy Statement*, 102 FCC 2d 1179, 1210. Here, no substantial and material questions of fact have been raised in the instant renewal proceeding regarding Micheal Parker or Reading’s basic character. There is nothing in the record to suggest a likelihood

that in the future Reading will not deal truthfully with the Commission and comply with the Communications Act and the Commission's rules and policies.

62. Micheal Parker's sole obligation was to report the denial of Mt. Baker's license application, which he did. The amendment to the Dallas assignment application did not withdraw any of the original appendices to the application. Since information concerning Mt. Baker was in Appendix 3, Micheal Parker met the Commission's reporting requirement that an applicant must advise the Commission regarding whether it or any party to the application has had any interest in or connection with an application that was denied or is the subject of unresolved character issues. Because the appendix remained part of the original application, it would be impossible for Micheal Parker to conceal the Mt. Baker decision. It is disingenuous to suggest that Micheal Parker was hiding something in plain view.

63. The claims made by Adams concerning Micheal Parker's alleged reporting violations with respect to *Religious Broadcasting* and *Mt. Baker* simply do not withstand careful analysis. Moreover, Adams presents no evidence to undermine Reading's record of compliance with Commission rules and policies. There is no presumption that misconduct at one station renders a licensee unqualified to operate other stations. *Character Policy Statement*, 102 FCC 2d 1179, 1224 at ¶94. Micheal Parker's alleged misconduct should not be imputed to other uninvolved stations.

64. Finally, it is ironic that Adams is claiming that Micheal Parker misrepresented information before the Commission and has omitted certain

information from his applications. The record in this case is abundantly clear that Adams has mischaracterized the Commission's holding in *Two if By Sea Broadcasting*, misstated the Review Board's holding in *Religious Broadcasting*, misstated the status of one of Micheal Parker's applications, and omitted any mention of the Norwell, Massachusetts proceeding in which the Bureau found that the outstanding matters in the Hartford, Connecticut proceeding were not an impediment to a grant of the assignment application. It is difficult, if not impossible, to distinguish Adams' conduct from its own accusations.

Respectfully submitted,

READING BROADCASTING, INC.

By: Thomas J. Hutton
Thomas J. Hutton
Randall W. Sifers

Its Attorneys

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August 11, 1999

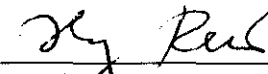
CERTIFICATE OF SERVICE

I, Ily Reis, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on August 11, 1999, a copy of the foregoing OPPOSITION TO MOTION TO ENLARGE ISSUES was delivered by hand to the following:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C864
Washington, DC 20554

James Shook, Esq.
Enforcement Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A463
Washington, DC 20554

Gene A. Bechtel
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1901 L Street, N.W.
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Washington, DC 20036
Counsel for Adams Communications Corporation



Ily Reis

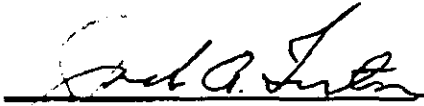
EXHIBIT A

Declaration of Jack A. Linton

Jack A. Linton hereby declares as follows:

1. I am and have been a stockholder and director of Reading Broadcasting, Inc. ("RBI") for several years, pre-dating the time that Micheal Parker began providing management services to RBI with respect to the operation of WTVE(TV), Reading, Pennsylvania.
2. RBI has no ownership interest in any other broadcast stations or applications of Micheal Parker.
3. The years since Mr. Parker became involved in the management of WTVE have been marked with continuing supervision by directors and often controversy as directors questioned, challenged and criticized Mr. Parker's management plans relating to the station. Since the successful reorganization of RBI in 1992, the other directors and stockholders of RBI have continued to play an active role in overseeing RBI's affairs. In fact, in August of 1997 the RBI board of directors terminated Micheal Parker as President of RBI and cancelled his management agreement in connection with a dispute over corporate management. He resumed his position as President of RBI and the management agreement was reinstated in November of 1997 by a vote of the board of directors.
4. RBI takes seriously its obligations as a licensee of the Federal Communications Commission ("FCC"). It is my belief that RBI's board of directors and stockholders would terminate Micheal Parker's corporate positions in RBI and his management role at RBI in the event that he caused RBI to violate the FCC's policy against misrepresentation or lack of candor or in the event the FCC conditioned a grant of the WTVE license renewal on termination of Micheal Parker's involvement in the management of the station. Penalizing the other stockholders for any misconduct by Micheal Parker in proceedings that do not involve RBI is unfair and serves no useful purpose.

5. I declare under penalty of perjury that the foregoing is true and correct.


Jack A. Linton

WAS1 #579127 v1

EXHIBIT B

LAW OFFICES

MULLIN, RHYNE AND TOPEL
PROFESSIONAL CORPORATION

1225 CONNECTICUT AVENUE, NW. - SUITE 300
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OFFICE OF SECRETARY

March 11, 1997

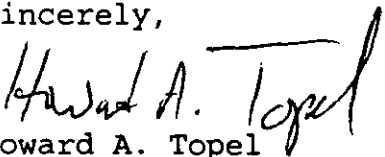
Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.--Room 222
Washington, D.C. 20554

Re: Reading Broadcasting, Inc.
WTVE-TV, Reading, Pennsylvania
File No. BRCT-940407KF

Dear Mr. Caton:

Enclosed in triplicate with respect to the above-referenced application is a copy of a letter from the FCC. A Petition for Reconsideration was filed on March 3, 1997, and is pending. Please call the undersigned counsel for Reading Broadcasting, Inc., if you have any questions.

Sincerely,


Howard A. Topel

HAT/jt
Enclosure

cc: Harry F. Cole, Esq.--w/encl.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

Released: January 30, 1997

Two If By Sea Broadcasting Corporation
c/o Howard A. Topel
Mullin, Rhyne and Topel
1225 Connecticut Avenue, NW Suite 300
Washington, DC 20036-2604

Shurberg Broadcasting of Hartford
c/o Harry F. Cole
Bechtel & Cole
1901 L Street, NW Suite 250
Washington, DC 20036

Gentlemen:

This refers to the December 12, 1996 letter filed by Two If By Sea Broadcasting Corporation (TIBS) requesting emergency relief. Specifically, TIBS requests that the Commission immediately grant its application for consent to the assignment of license of WHCT-TV, Channel 18, Hartford, Connecticut from Martin W. Hoffman, Trustee-in-Bankruptcy (Trustee) to TIBS. File No. BALCT-930922KE.

By way of background, in 1980 the Commission designated for hearing the application of Faith Center, Inc., (FCI) for renewal of the license of WHCT-TV. *See Faith Center, Inc.*, 83 FCC 2d 401 (1980). FCI responded by filing a petition for special relief seeking permission to transfer its license pursuant to the Commission's minority distress sale policy,¹ which the Commission granted. *See Faith Center, Inc.*, 88 FCC 2d 788 (1981). In December, 1983, while FCI attempted to effectuate a transfer of WHCT-TV, Shurberg Broadcasting of Hartford, Inc., (SBH) filed a competing application against the station's still pending renewal. File No. BPCT-831202KF. Nevertheless, in December, 1984, the Commission granted the assignment of WHCT-TV to Astroline Communications Company Limited Partnership (Astroline). *See Faith Center, Inc.*, 99

¹ Under this policy, a broadcast licensee whose license had been designated for a hearing could sell its station, after designation for hearing but prior to commencement of the hearing, to a minority-controlled entity at 75% or less of the station's fair market value. *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978).

FCC 2d 1164 (1984).² In February, 1991 the Commission reinstated the SBH competing application against Astroline's license renewal application.³ Meanwhile, in 1988, Astroline had filed for bankruptcy, and in May, 1991, the Commission consented to the assignment of license of WHCT-TV to the Trustee-In-Bankruptcy. File No. BALCT-910506KH. Because WHCT-TV had gone off the air, the Trustee began filing requests for consent for the station to remain dark. Finally, in September, 1993, the Trustee filed the assignment application to TIBS which is the subject of the instant request for relief.

SBH timely filed a Petition to Deny that application in which it argued, *inter alia*, that because the assets of WHCT-TV had either been foreclosed upon or transferred out of the licensee's estate, the Trustee holds a bare license. Petitioner further asserted that despite Astroline's representations to the Commission otherwise, it did not qualify as a minority-controlled entity for the purpose of the minority distress sale policy. Lastly, SBH maintained that TIBS principal Micheal L. Parker, and applicants associated with Parker, have been the subject of serious questions concerning their conduct before the Commission, which thus raises an issue regarding the qualification of the assignee to hold a Commission license. In response to these claims, TIBS asserted that it had equipment in the transmitter building at the transmitter site, that SBH was estopped from raising minority control issues since those had been decided by the Supreme Court, and that the fact that the Commission had granted applications filed by TIBS and Parker in the past indicated that both met the Commission's basic qualifications for licensees.

Now TIBS requests immediate grant of its assignment application. Prompting this request is a provision of the Telecommunications Act of 1996, as implemented by the Commission, requiring that the licenses of stations off the air prior to February 8, 1996, will expire on February 9, 1997 should they not resume operation before that time.⁴ TIBS asserts that if the Commission grants its request and approves the assignment of WHCT-TV, it will place the station back on the air prior to February 9, 1997. Although the Commission generally defers action on the sale of a station during the pendency of that station's renewal, TIBS cites precedent which it claims stands for the proposition that the Commission will grant exceptions to the deferral policy in extraordinary situations such as those involving bankruptcy,⁵ or where grant of

² SBH also filed, and the Commission rejected, objections to the distress sale policy. *Faith Center, Inc.*, 55 RR 2d 41 (Mass Med. Bur. 1984); *Faith Center, Inc.*, 54 RR 2d 1286 (1983). Ultimately the Supreme Court upheld the constitutionality of this policy. See *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990).

³ We note that comparative proceedings generally remain frozen in the wake of *Bechtel v. FCC*, 10 F3d 875 (D.C.Cir. 1993). See *FCC Freezes Comparative Proceedings*, 9 FCC Rcd 1055 (1994); *Modification of FCC Comparative Proceedings Freeze Policy*, 9 FCC Rcd 6689 (1994).

⁴ See *Implementation of Section 403(1) of the Telecommunications Act of 1996 (Silent Station Authorizations)*, FCC 96-218 at ¶5, released May 17, 1996; see also 47 U.S.C. §312(g) (1996).

⁵ See *Stockholders of CBS Inc.*, 11 FCC Rcd 3733, 3748 (1995); *The Rex Company*, 8 FCC Rcd 3988, 3988 (1993); *Bennett Gilbert Guines*, 5 FCC Rcd 2052 (Audio Serv. Div. 1990); *Arthur A. Cirilli*, 2 FCC 2d 692,693 (1966).

the sale will ensure continued operation of a station during the pendency of a hearing proceeding." TIBS also argues that the outstanding SBH petition to deny the assignment does not preclude immediate grant of that application, because the Trustee has more than a bare license to assign since it has the right to lease the transmitter site, and because the "utterly meritless" allegations concerning Astroline and Parker can be raised during the comparative renewal proceeding.

In regards to the bare license issue, SBH responds that TIBS gained the right to lease the transmitter site *after* the filing of the assignment application, and that the lease agreement merely grants it the right to space on a transmitter tower. SBH further notes that the lessor sold the transmitter site in December, 1995.⁷ Additionally, SBH argues that the precedent cited by TIBS does not support grant of an exception to the deferral policy in a situation such as the one here, where a petition raising serious character issues has been filed against the assignment, and where a competing application remains pending against a renewal application. Grant of the assignment cannot occur, maintains SBH, because Commission policy requires that it first examine the qualifications of both assignor and assignee, and substantial questions of material fact have been raised regarding the qualifications of both Astroline and Parker. SBH states that it has new documentation supporting its claim about Astroline. With respect to Parker, SBH notes that although applications with which he has been associated have been granted, in those applications he lacked candor concerning the nature of his past problems with the Commission, which included findings that he had been central to applications found to have attempted fraud on the Commission.⁸

TIBS has provided no basis for us to grant its request. Contrary to its assertions, precedent does not support an exception to our deferral policy under the facts of this case. In *Stockholders of CBS Inc.*, we granted the transfer of CBS to Westinghouse despite the pendency of the license renewal of one of the stations involved in that transaction, as well as the existence of a competing applicant who raised basic qualifications issues against the transferor. 11 FCC Red 3733, 3748 (1995). Unlike the instant case, however, that case involved special circumstances in that deferring the transfer pending the comparative hearing would compel delay of a merger involving 31 broadcast facilities.⁹ Finally, and most critically, in that case the

⁷ See *Mid-Ohio Communications, Inc.*, 90 FCC 2d 114 (1982).

⁸ In its reply, TIBS noted that in January, 1997, it entered into two agreements with the transmitter site lessor's successor, one giving it the right to use space on a transmission tower, and another conveying to it a television transmission antenna currently mounted on that tower, for use at the site.

⁹ SBH also presents a copy of a record from the Office of the Secretary of the State of Delaware, dated December 20, 1996, declaring that TIBS "is no longer in existence and good standing under the laws of the State of Delaware" due to failure to pay its taxes.

¹⁰ *Mid-Ohio Communications, Inc.*, the other case cited by TIBS in which we granted an exception to our deferral policy involved extraordinary circumstances not present here. 90 FCC 2d 114 (assignment granted despite pending renewal where controlling interest in licensee's stock was in escrow account and not subject to exercise by anyone).